

**City Of Martinsburg
Regular Council Meeting
June 13, 2013
The J. Oakley Seibert Council Chambers**

With a quorum present, the regular session of the Martinsburg City Council was called to order by Mayor George Karos at 6:30 p.m. The following Council Members were present: Don Anderson, Dennis Etherington, Kevin Knowles, Jason Baker, Max Parkinson, Gregg Wachtel, and Roger Lewis. Also present were: Mark Baldwin, City Manager, Kin Sayre, Legal Counsel, Gena Long, City Recorder, Chief Paul Bragg, Martinsburg Fire Department, Chief Kevin Miller, Martinsburg Police Department, Steve Knipe, Utilities Director, Michael Covell, City Engineer/Planning Director, Patricia McMillan, Community Development Director, Jeff Wilkerson, Public Works Director and Mark Spickler, Finance Director.

3. Salute to Flag

Councilman Knowles led the Salute to the Flag.

4. Prayer—

5. Public Hearing—A public hearing to solicit citizen comment on Ordinance 2013-05: *An Ordinance Setting Forth Water Rates, Minimum Charge, Reconnection Charge, Service Connection Charge, Delayed Payment Penalty, And Capital Improvement Fees For The City Of Martinsburg, West Virginia*

Mayor Karos opened the public hearing at 6:35 PM.

- The Mayor's comments were read into the record:

As part of the Public Hearing and before receiving comments on Ordinance 213-05, I would like to make a few comments, for the record, the reasons for the water rate increase.

In November, 2011, the City of Martinsburg was issued a Consent Order by the WV Department of Environmental Protection, Division of Water and Waste Management that outlined specific dates and times for the City to meet Chesapeake Bay water quality requirements. This resulted in the recent sewer improvement project design and sewer rate increase.

The City of Martinsburg is a combined water and sewer utility. When the sewer rate analysis was being completed, it also required a water rate analysis.

The water and sewer systems analysis indicated a sewer rate increase was needed to cover the cost of the \$51M sewer improvement project. It also indicated that a smaller water rate increase was needed in order to cover the operations of the water department and more importantly to ensure the City had adequate bond coverage for the outstanding 2011 water system improvement project bonds.

The City must have proper bond coverage or we will be in violation of the bond ordinance and state agencies regulations.

I will now receive comments from the public.

- Ms. Stephanie Robinson, 136 E. John Street, spoke in opposition to the passage of Ordinance 2013-05. She further stated that she was on a fixed income and applauded Councilmen Baker and Anderson for voting "no" on the first and second reading. Ms. Robinson also commented on the City not allowing water and

sewer customers to place a metering device on outdoor water spigots, which would not be calculated into sewer charges. She stated that she does a considerable amount of outdoor watering of plants and does not feel she should be charged for sewer usage for outdoor water use.

- Ms. Lisa Melsher, 363 Boyd Avenue, wished to speak for the residents of Shenandoah Village Apartments, which are not in City limits. Council advised Ms. Melsher to address the Berkeley County Council with her concerns.

6. Approve May 09, 2013 Regular Council Meeting Minutes

Motion made by Councilman Knowles, seconded by Councilman Wachtel, to approve the May 09, 2013 Regular Council Meeting Minutes. Motion carried unanimously.

7. Approve May 17, 2013 Special Council Meeting Minutes (Canvass)

Motion made by Councilman Parkinson, seconded by Councilman Etherington, to approve the May 17, 2013 Special Council Meeting Minutes (Canvass). Motion carried unanimously.

8. Approve May 21, 2013 Special Council Meeting Minutes.

Motion made by Councilman Etherington, seconded by Councilman Parkinson, to approve the May 21, 2013 Special Council Meeting Minutes. Motion carried 6-1, Baker, no.

9. Approve May 23, 2013 Special Council Meeting Minutes

Motion made by Councilman Baker, seconded by Councilman Wachtel, to approve the May 23, 2013 Special Council Meeting Minutes. Motion carried unanimously.

10. Approve April 2013 Administrative and Financial Report.

Motion made by Councilman Etherington, seconded by Councilmen Baker, to approve the April 2013 Administrative and Financial Report. Motion carried 6-1, Anderson, no.

Councilman Anderson explained that he had voted “no” because he had questions about some line items on the check register. He asked about several line items, and Finance Director Mark Spickler replied that when multiple purchase orders are written for one vendor, the line item will only show the details of the most recent payment entered, which can be misleading. Mr. Spickler offered to print a more detailed report in the future and invited any Council member to call or come by his office to discuss specific questions.

11. Presentations

There were no presentations.

12. Petitions From Citizens

There were no petitions from citizens.

13. Receive and File Reports—Minutes—Correspondence of the Following:

- a. Letter from Comcast regarding programming changes effective June-July 2013
- b. Historic Preservation Review Commission May 6, 2013 Meeting Minutes

c. Planning Commission May 1, 2013 Meeting Minutes

Motion made by Councilman Wachtel, seconded by Councilman Etherington to receive and file items 13a-c. Motion carried unanimously.

14. Reports of Chairpersons of Council Standing Committees

There were no reports of chairpersons of Council Standing Committees.

15. Report of Mayor

a. 4th of July Festivities.

The following prepared statement was read into the record, and it was sent to various media agencies as a news brief.

The 4th of July Fireworks, sponsored by the City of Martinsburg, will be held on Thursday, July 4, 2013 at 9:30 PM. The rain date is Friday, July 5, 2013 at 9:30 pm. The fireworks display will take place in the same location it has in past years when M-BC Parks and Rec was the sponsor.

War Memorial Park (Per M-BC Parks and Recreation)

War Memorial Park will be open on July 4th from dawn to dusk. Pavilions are for those who have made reservations. Open picnic areas are first come first-come/first-available use.

Public swimming at War Memorial Park will be held from 12:00 noon to 5:00 pm only.

Concessions and Mini Golf Course will be open from 11:00 am to 9:00 pm.

The Pool and Grass and Beach area “will not” be open after 5:00 pm. This area “will not” be available for the viewing of fireworks as in past years.

Due to the pool viewing area being closed, residents and visitors should make adequate and timely plans for watching the fireworks as the view from within War Memorial Park is limited.

No other special activities, i.e. music or entertainment, are scheduled at the park. There will also be no concert in the park for the July 4th Thursday evening.

The City of Martinsburg Police Department will have a presence within the park throughout the day. Berkeley County Sheriff's Office and W. Va State Police will also be assisting throughout the day.

Parking along the I-81 berms is prohibited for viewing the fireworks.

Visitors to Martinsburg are also encouraged to respect the restrictions of “no parking” on private residential and business properties, where posted.

The City of Martinsburg wishes everyone a safe and happy 4th of July.

b. Schedule Special Council Meeting for Monday, July 29, 2013 at 5:00 PM for FY 2013-2014 Budget Amendment per WV. State Code.

Mayor Karos scheduled the above special meeting.

c. Announce rescheduling of Regular Council Meeting from August 8, 2013 to August 15, 2013.

Mayor Karos announced the rescheduling of the August 8, 2013 Council Meeting, explaining that several Councilmen had expressed interest in attending the Municipal League Conference as there were many discussions regarding Home Rule scheduled.

16. Report of City Attorney

a. Discuss request for de-annexation of a portion of The Gallery Subdivision, Map M35, Parcels 19, 20 & 2.1—C.J. Seibert Orchard Company

b. Discuss request for de-annexation of Map M35, parcel 18—Scott and Penny Myers

City Attorney Kin Sayre discussed the two de-annexation requests at once. He stated that such an action would require Council approval and could be done via minor boundary line adjustment or petition. He advised Council that they would need to determine if this course of action is in the best interest of the City.

Mr. Scott Myers, 13301 Apple Harvest Drive, discussed his request. He stated that he is 1.3 miles from I-81, that he is the only home on Apple Harvest Drive in City limits and he receives no services other than fire and garbage. He went on to say that, originally, the Gallery subdivision was to extend into the area to the rear of his property, into the area being considered for de-annexation at the request of Jim Seibert, and had that happened, he would not be requesting de-annexation. However, according to Mr. Myers, the Gallery development is finished and the land has been leased as farm land for the next 30 years. He reiterated that there is no advantage to being the only home on Apple Harvest Drive in City limits; there are no snow plows, no street sweeping and no police patrol.

Councilman Baker asked if a de-annexation had been approved in the past. Mr. Sayre answered that it had, but in conjunction with a larger annexation, one parcel of a 700 acre annexation had been de-annexed at the request of the property owner, Jim Seibert. Councilman Baker stated that he believes a de-annexation would set a bad precedent and is not in the best interest of the city, both property owners requesting de-annexation had a choice on whether to annex into or purchase property in the City limits.

City Manager Mark Baldwin asked Mr. Myers if his home was in the City when he purchased it. Mr. Myers stated that it was, that Tim Shaw, the developer of the Gallery, had requested the annexation as it was once part of the Seibert property.

Council decided to discuss this issue at the next applicable Committee meeting, to be placed on a future agenda for action.

c. Discuss Habitat for Humanity's request to waive community development fee for current project located at Auburndale Subdivision, Lot 11 and subsequent projects located at Auburndale Subdivision, Lots 12-15

Mr. Edward Grove, Habitat for Humanity, explained that these homes are to be provided for those of low income, with a focus on veterans. He requested the waiver of fees due to special circumstances for these lots, which require a full basement, which would require a larger than normal community development fee.

Councilman Baker asked Council to consider waiving the fees for the organization.

Mr. Baldwin stated that an ordinance may be needed to set forth conditions for a waiver, as the current ordinance has no stated conditions.

Mr. Sayre suggested scheduling the issue at the next applicable Committee meeting, and Council agreed.

17. Report of City Manager

a. Projects Update

City Manager Mark Baldwin had nothing further to add.

18. Unfinished Business

a. Third and Final Reading of Ordinance 2013-05: An Ordinance Setting Forth Water Rates, Minimum Charge, Reconnection Charge, Service Connection Charge, Delayed Payment Penalty, And Capital Improvement Fees For The City Of Martinsburg, West Virginia

Councilman Baker asked if money could be saved by securing better bond rates. Mr. Spickler replied that this process was done in 2011, and the rate decrease would have to be very substantial to justify the cost of refinancing, that he would review current going rate.

Councilman Wachtel pointed out that, as City residents, Councilmembers pay the increased rate also, that even with the increase, Martinsburg has lower rates in the area.

Motion made by Councilman Parkinson, seconded by Councilman Lewis, to hear the third and final reading and approve Ordinance 2013-05. Motion carried 5-2, Baker and Anderson, no.

16. New Business

a. First and Second Reading of Ordinance 2013-06: An Ordinance To Amend And Re-Enact Portions Of The Codified Ordinances Of The City Of Martinsburg, Part Seventeen – Building And Housing Code, Article 1711 – West Virginia State Building Code, Section 1711.01 – Adoption; And Repealing Ordinance Number 2010-08 Of The City Of Martinsburg, West Virginia.

Motion made by Councilman Parkinson, seconded by Councilman Parkinson to approve the first and second reading of Ordinance 2013-06. Motion carried 6-1, Baker, no.

b. First and Second Reading of Ordinance 2013-07: An Ordinance Amending Ordinance 2012-07 Which Established Job Descriptions For Employees Of The City Of Martinsburg, West Virginia

Motion made by Councilman Etherington, seconded by Councilman Anderson, to hear the first and second reading of Ordinance 2013-07. Motion carried 6-1, Knowles, no.

c. Approve/deny job description for Chief Magistrate

Councilman Baker urged Council not to approve the job description, to consider that a position with that much responsibility should be an elected position.

Motion made by Councilman Etherington, seconded by Councilman Lewis, to approve the job description for Chief Magistrate. Motion carried 5-2, Knowles and Baker, no.

d. Approve/deny Strategic Alliance Memorandum of Agreement between the City of Martinsburg and Shepherd University

Councilman Anderson reminded Council that a Resolution had been presented that expressed a desire for Shepherd University's Martinsburg campus to be located in the City, which did not happen, but now Shepherd is requesting a Memorandum of Agreement.

Motion made by Councilman Baker, seconded by Councilman Wachtel, to approve the Strategic Alliance Memorandum of Agreement between the City of Martinsburg and Shepherd University. Motion carried 6-1, Anderson, no.

e. Approve/deny letter of request from the Martinsburg/Berkeley County Convention and Visitors Bureau to provide support in bringing the *Civil War 150 HistoryMobile* to Martinsburg—tentative date May 10, 2014

Motion made by Councilman Knowles, seconded by Councilman Baker, to approve letter of request from the Martinsburg/Berkeley County Convention and Visitors Bureau to provide support in bringing the *Civil War 150 HistoryMobile* to Martinsburg—tentative date May 10, 2014. Motion carried unanimously.

Mr. Baldwin asked Ms. Gassler, Martinsburg-Berkeley County Convention and Visitors Bureau, to work with Chief Miller on the logistics of driving and parking an 18-wheeler downtown.

f. Authorize Mayor George Karos to sign agreement to reserve FY 2011 and FY 2012 CHDO Funds for Habitat for Humanity of the Eastern Panhandle, Inc. in the amount of \$65,000 for construction of one new affordable housing unit.

Motion made by Councilman Wachtel, seconded by Councilman Baker, to authorize Mayor George Karos to sign agreement to reserve FY 2011 and FY 2012 CHDO Funds for Habitat for Humanity of the Eastern Panhandle, Inc. in the amount of \$65,000 for construction of one new affordable housing unit. Motion carried unanimously.

g. Approve/deny executing Memorandum of Agreement to transfer HOME Match Credit with Habitat for Humanity of the Eastern Panhandle, Inc.

Motion made by Councilman Wachtel, seconded by Councilman Etherington, to approve executing Memorandum of Agreement to transfer HOME Match Credit with Habitat for Humanity of the Eastern Panhandle, Inc. Motion carried unanimously.

h. Approve/deny recommended revisions to FY 2013 Annual Action Plan for CDBG and HOME reflecting official allocations from U.S. Department of Housing and Urban Development and authorize the Mayor to submit revised documents to US HUD.

Motion made by Councilman Etherington, seconded by Councilman Anderson, to approve recommended revisions to FY 2013 Annual Action Plan for CDBG and HOME reflecting official allocations from U.S. Department of Housing and Urban Development and authorize the Mayor to submit revised documents to US HUD. Motion carried unanimously.

i. Approve/deny Resolution 2013-07: *A Resolution Concerning the Extension of the Cable Television Franchise Held by Comcast of CA/MD/PA/VA/WV, LLC. For The Purpose Of Permitting The City Of Martinsburg, WV And The Franchisee To Complete Renewal Discussions*

Mr. Baldwin explained that the agreement is currently awaiting Comcast's revisions.

Councilman Anderson asked about mention of rate increase in the agreement. Mr. Sayre explained that Council has no authority to determine rate, that other non-exclusive agreements can be signed with other providers, but that Comcast currently owns the infrastructure.

Councilman Baker asked what would happen if Council voted no on the extension. Mr. Sayre replied that Comcast could stop service to City customers. Councilman Baker suggested that the agreement be more aggressive, that the City should ask for more from Comcast. Mr. Baldwin stated that Council would have the opportunity to read and vote on the upcoming draft agreement, that he has been researching to ensure

that other jurisdictions are not getting more concessions than what the City would get with the new agreement.

Councilman Baker asked about allowing other companies the opportunity to operate in Martinsburg. Mr. Sayre reiterated that the contracts are non-exclusive, but that the City does not own the infrastructure, and that Comcast would have the option to stop service to the customers or to operate without an agreement, which would mean the City gets no concessions.

Motion made by Councilman Wachtel, seconded by Councilman Etherington, to approve Resolution 2013-07. Motion carried 6-1, Baker, no.

j. Approve/deny Resolution 2013:08: General Budget Revision # 4—FY 2012-2013

Motion made by Councilman Etherington, seconded by Councilman Baker, to approve Resolution 2013-08. Motion carried unanimously.

k. Approve/deny Fire/EMS Budget Revision #2—FY 2012-2013

Motion made by Councilman Knowles, seconded by Councilman Etherington to approve the Fire/EMS Budget Revision #2—FY 2012-2013. Motion carried unanimously.

l. Approve/deny Water and Sewer Fund Budget Revision # 2—FY 2012-2013

Motion made by Councilman Etherington, seconded by Councilman Baker, to approve the Water and Sewer Budget Revision #2—FY 2012-2013. Motion carried unanimously.

m. Approve/deny Parking Fund Budget Revision #2—FY 2012-2013

Motion made by Councilman Etherington, seconded by Councilman Wachtel, to approve the Parking Fund Budget Revision #2—FY 2012-2013. Motion carried unanimously.

n. Approve/deny Sanitation Fund Budget Revision # 2—FY 2012-2013

Motion made by Councilman Wachtel, seconded by Councilman Etherington to approve the Sanitation Fund Budget Revision #2—FY 2012-2013. Motion carried unanimously.

o. Appointments to the following positions:

City Recorder

Motion made by Councilman Knowles, seconded by Councilman Wachtel, to appoint Gena Long as City Recorder through June 30, 2014. Motion carried unanimously.

Police Court Judge(s)

Councilman Knowles stated that he would like Council to consider electing judges and magistrates, that more representation would result in more voter involvement.

Councilman Baker agreed, stating that judges should be elected in and live in the City.

Motion made by Councilman Wachtel, seconded by Councilman Parkinson, to appoint Judge Kershner as City Judge through June 30, 2014. Motion carried 4-3, Anderson, Knowles and Baker, no.

Motion made by Councilman Wachtel, seconded by Councilman Etherington, to appoint Judge Alter as Alternate City Judge through June 30, 2014. Motion carried 5-2, Knowles and Baker, no.

Motion made by Councilman Wachtel, seconded by Councilman Etherington, to appoint Judge Trumble as Alternate City Judge through June 30, 2014. Motion carried 5-2, Knowles and Baker, no.

City Treasurer

Councilman Knowles commended Councilman Etherington on his work as Treasurer, but stated that he would like to see the City Treasurer position rotate each year to give Councilmembers an opportunity to learn more about City finances and opportunities to grow.

Motion made by Councilman Baker to appoint Kevin Knowles as Treasurer through June 30, 2014. Motion died for lack of a second.

Motion made by Councilman Lewis, seconded by Councilman Parkinson to appoint Councilman Etherington as Treasurer through June 30, 2014. Motion carried unanimously.

p. Approve/deny Health Insurance with Highmark Blue Cross Blue Shield

Motion made by Councilman Etherington, seconded by Councilman Wachtel, to approve Health Insurance with Highmark Blue Cross Blue Shield. Motion carried unanimously.

q. Approve/deny Mutual Aid Agreement between the City of Martinsburg and the Secretary of the Air Force through the Commander, 167th Airlift Wing for fire protection and emergency management services

Motion made by Councilman Wachtel, seconded by Councilman Anderson, to approve Mutual Aid Agreement between the City of Martinsburg and the Secretary of the Air Force through the Commander, 167th Airlift Wing for fire protection and emergency management services. Motion carried unanimously.

r. Approve/deny bid for 2013 Freightliner Sanitation Truck--\$137,900—West Virginia Tractor Company (Sanitation Fund)

Motion made by Councilman Etherington, seconded by Councilman Knowles to approve the bid for the 2013 Freightliner Sanitation Truck in the amount of \$137,900 from West Virginia Tractor Company. Motion carried unanimously.

s. Approve/deny bid for stump removal throughout the City--\$2,700—Pennington Tree Experts (Public Works Fund)

Councilman Anderson asked Public Works Director to confirm which Pennington this is, Mr. Wilkerson replied that it is Nova Pennington.

Councilman Baker asked how many stumps this would be, as a stump grinder for the bobcat would cost approximately \$6-7,000. Mr. Wilkerson replied that this quote is for the list of 44 stumps on the list, currently.

Motion made by Councilman Etherington, seconded by Councilman Baker, to approve the bid for stump removal throughout the City in the amount of \$2,700 payable to Pennington Tree Experts. Motion carried unanimously.

t. Approve/deny Ninth Amendment to Lease, extending the lease agreement between the City of Martinsburg and the Berkeley Post 14, American Legion, Inc—July 1, 2013-December 31, 2013

Motion made by Councilman Wachtel, seconded by Councilman Etherington, to approve the Ninth Amendment to the lease, extending the lease agreement between the City of Martinsburg and the Berkeley County Post 14, American Legion, Inc. through December 31, 2013. Motion carried unanimously.

u. Approve/deny Standard Operating Procedures—Fire Department Leave Policies

Mr. Baldwin confirmed that the leave policies are in conjunction with existing City of Martinsburg Personnel Policies.

Motion made by Councilman Etherington, seconded by Councilman Knowles, to approve the Standard Operating Procedures for Fire Department Leave Policies. Motion carried unanimously.

v. Approve/deny purchase of air conditioning unit for the Fire station—Shenandoah Heating and Air--\$6,250—Fire/EMS Fund

Motion made by Councilman Etherington, seconded by Councilman Anderson, to approve the purchase of an air conditioning unit for the Fire Station in the amount of \$6,250 to Shenandoah Heating and Air. Motion carried 6-1, Knowles abstained as he is employed by a competing company.

w. Approve/deny annual CROP Hunger Walk route—Sunday, October 6, 2013 from 2PM-5PM.

Motion made by Councilman Etherington, seconded by Councilman Anderson, to approve the annual CROP Hunger Walk route. Motion carried unanimously.

x. Approve/deny application for 2013 JAG Grant—Police Department--\$15,326 (no City Match)

Motion made by Councilman Wachtel, seconded by Councilman Etherington to approve the application for the 2013 JAG Grant. Motion carried unanimously.

18. Executive Session

Motion made by Councilman Etherington, seconded by Councilman Wachtel to enter Executive Session for legal matters at 8:51 PM. Motion carried unanimously.

Adjournment

Meeting was adjourned by unanimous consent at 9:15 PM.


Gena Long, City Recorder


George Karos, Mayor